IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21660 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIPAK PETROCHEM LTD. THR'ITS AUTHORISED SIGNATORY - Petitioner(s)
Versus
COMMISSIONER OF SALES TAX & 2 - Respondent(s)

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Appearance :
MR AR MAJMUDAR for Petitioner(s) : 1,MR NK MAJMUDAR for Petitioner(s) : 1,
MR APURVA DAVE AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 30/08/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Rule. Mr Apurva Dave, learned AGP waives service of Rule for the respondents. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Articles 226 and 227 of the Constitution is the order dated 30.9.2005 passed by the Gujarat Sales-tax Tribunal in Second Appeal Nos.387 and 388 of 2005.

3. The petitioner-Company had filed first appeals before the first appellate authority challenging the orders of assessment passed by the Sales-tax Officer for the two assessment years. During pendency of the first appeals, the petitioner filed applications for interim stay against recovery. The first appellate authority directed the petitioner to deposit the tax amounts as a condition for hearing the appeals on merits. On account of failure on part of the petitioner to deposit the said amounts, the first appeals came to be dismissed. The petitioner thereupon filed second appeals before the Tribunal. At the hearing of these appeals, the Tribunal considered the question with respect to admissibility of first appeals without insisting on payment of tax, penalty and interest. After referring to the said question, in paragraph 3 of the order, the Tribunal specifically recorded the following statement made on behalf of the petitioner-Company -

> "The learned advocate for the appellant in both the matters has contended that a reasonable amount may be paid by the appellant in each of the two cases."

After hearing the learned advocates for the parties, the Tribunal expressed the view that it would be just and proper to direct the petitioner-herein to pay 25% of the tax dues in each of the two matters. The final order passed by the Tribunal, reads as under:-

> "2. Both the Second Appeals are partly allowed and the orders dated 31.1.2005 passed by the learned First Appellate Authority are ordered to be set aside.

> 3. Both the matters are remanded back to the learned Deputy Commissioner of Sales Tax (Appeal-5) Vadodara for decision on merits.
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> 4. The appellant shall pay 25% of tax amount within a month and on production of receipt/chalan before the learned First Appellate Authority, the said authority shall undertake the process of hearing the appeals on merit."

4. Mr Majmudar, learned advocate for the petitioner-Company has submitted that on proper assessment in accordance with law, the liability of the petitioner would be much less, that in spite of the fact that the registration of the petitioner-Company as a dealer was erroneously cancelled and that subsequently the registration was restored and, therefore, the Assessing Officer had acted illegally in making assessment as if the petitioner was an unregistered dealer. It is also submitted that on merits the petitioner has a good case for what it sells is petroleum product and not solvent oil.

It is further stated that the amount of tax already paid by the petitioner has not been taken into account.

5. On the other hand, Mr Apurva Dave, learned AGP submits that the Tribunal has passed a just and proper order and no interference is called for.

6. Having heard the learned advocates for the parties, in the facts and circumstances of the case, we are of the view that the order passed by the Tribunal requiring the petitioner to deposit 25% of the tax amount as a condition for hearing the first appeals is not required to be disturbed, but while disposing of the petition, we clarify that the petitioner shall pay 25% of the sales-tax assessed in the assessment orders against which first appeals are filed by the petitioners, which amounts shall be paid by the petitioner by 31st

October 2007. Hence while computing 25% of the amount only the arrears of sales-tax would be taken into consideration and not interest or penalty.

7. As regards Mr Majmudar's contention that substantial amount was paid towards liabilities for the assessment years in question, it will be open to the petitioner to point out this fact before the concerned authority with necessary evidence in support thereof and upon such evidence being produced, the concerned authority shall give credit thereof against 25% of the tax amount for the assessment years in question.

8. With the above clarification and observations, the petition is disposed of. Rule is made absolute to the aforesaid extent only.

Direct service is permitted.

(M.S. SHAH, J.)

(K.A. PUJ, J.)

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